

LEGISLATIVE BILL 881

Approved by the Governor April 07, 2016

Introduced by Schilz, 47.

A BILL FOR AN ACT relating to energy financing contracts; to amend sections 66-1062, 66-1064, and 66-1065, Reissue Revised Statutes of Nebraska; to redefine terms; to change governmental unit duties; to change provisions relating to contract contents and bond requirements as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 66-1062, Reissue Revised Statutes of Nebraska, is amended to read:

66-1062 For purposes of sections 66-1062 to 66-1066:

(1) Energy conservation measure means a training, service, or operations program, ~~or facility alteration, or capital equipment acquisition designed to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs designed to reduce energy consumption.~~ Energy conservation measure includes:

(a) Repair or renovation of heating, ventilation, and air conditioning systems;

(b) Installation or repair of automated or computerized energy control systems;

(c) Replacement or modification of lighting fixtures;

(d) Insulation of a building structure or systems within that structure;

(e) Installation of energy recovery systems;

(f) Installation of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(g) Replacement, weatherstripping, caulking, or other insulation of windows or doors; ~~or~~

(h) Meter replacement, installation, or modification or installation of automated meter reading systems ~~Any other measure designed to reduce energy consumption;~~

(i) Replacement or installation of energy or water conservation equipment or improvements thereto, or the substitution of non-water-using fixtures, appliances, or equipment; or

(j) Any other measure designed to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs;

(2) Energy financing contract means an agreement between an energy service company and a governmental unit for the implementation of one or more energy conservation measures in an existing facility in order to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs ~~exchange for a portion of the energy cost savings produced.~~ Energy financing contract includes, but is not limited to, a performance contract, shared-savings contract, guaranteed contract, and lease-purchase contract;

(3) Energy service company means a person or business experienced in the implementation and installation of energy conservation measures; and

(4) Governmental unit means a school district, community college area, village, city, county, or department or agency of the State of Nebraska.

Sec. 2. Section 66-1064, Reissue Revised Statutes of Nebraska, is amended to read:

66-1064 (1) Prior to entering into an energy financing contract, a governmental unit shall obtain a written opinion from a professional engineer licensed in the State of Nebraska whose interests are independent from the financial savings or other revenue enhancement outcomes ~~outcome~~ of the contract. The opinion shall contain a review of recommendations proposed by an energy service company pertaining to energy conservation measures designed to reduce energy or other utility consumption or to achieve operational or capital savings or revenue enhancement for ~~to~~ the governmental unit.

(2) At least fourteen days prior to entering into an energy financing contract, a governmental unit shall furnish public notice of its intention to enter into such contract, the general nature of the proposed work being considered under the contract, and the name and telephone number of a person to be contacted by any energy service company interested in submitting a proposal to contract for such work. The governmental unit shall also directly solicit requests for qualifications from at least three energy service companies relating to the proposed contract.

(3) Upon receiving responses to its request for qualifications pursuant to subsection (2) of this section, the governmental unit may select the most qualified energy service company based on the company's experience, technical expertise, and financial arrangements, the overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant and appropriate. The governmental unit may thereafter negotiate and enter into an energy financing contract pursuant to section 66-1065 with the company selected based on the criteria established by the governmental unit.

Sec. 3. Section 66-1065, Reissue Revised Statutes of Nebraska, is amended to read:

66-1065 (1) Any energy financing contract entered into by a governmental unit shall:

(a) Detail the responsibilities of a Nebraska-licensed professional engineer in the design, installation, and commissioning of the energy conservation measures selected by the governmental unit. Any design shall conform to all statutes of the State of Nebraska pertaining to engineering design and public health, safety, and welfare;

(b) Set forth the calculated energy, utility, wastewater, or water cost savings or revenue enhancements, if applicable, during the contract period attributable to the energy conservation measures to be installed by the energy service company. Operational or capital savings or revenue enhancements may be included in the total savings amount, not guaranteed, but approved by the governmental unit;

(c) Estimate the useful life of each of the selected energy conservation measures;

(d) Provide that, except for obligations on termination of the contract prior to its expiration, payments on the contract are to be made over time, within a period not to exceed thirty years after the date of the installation of the energy conservation measures provided for under the contract;

(e) Provide that the calculated savings for each year of the contract period will meet or exceed all payments to be made during each year of the contract;

(f) Disclose the effective interest rate being charged by the energy service company; and

(g) In the case of a guaranteed savings contract, set forth the method by which savings will be calculated and a method of resolving any dispute in the amount of the savings. The energy service company shall have total responsibility for the savings guarantee for each guaranteed savings contract. Surplus savings realized during any year of the guaranteed savings contract shall be applied to future years' savings results.

(2) An energy service company entering into an energy financing contract shall provide a performance bond to the governmental unit in an amount equal to one hundred percent of the total cost of the implementation, installation, or construction of the energy conservation measures under the applicable energy financing contract to assure the company's faithful performance. The energy service company shall also supply a guarantee bond equal to one hundred percent of the guaranteed energy savings for the entire term of the contract. ~~For purposes of this section, total cost means all costs associated with the design, installation, modification, commissioning, maintenance, and financing of all energy conservation measures contemplated under the contract.~~

Sec. 4. Original sections 66-1062, 66-1064, and 66-1065, Reissue Revised Statutes of Nebraska, are repealed.